

The Role of U.S. Intelligence in Promoting Economic Interests

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For the U.S. intelligence community, the end of the Cold War meant a change to what had been its focus for more than 40 years. While intelligence agencies worried about a myriad of issues during this period, the military threat to the United States posed by the former Soviet Union and its Warsaw Pact allies had without question been its chief concern and, in the eyes of many, its *raison d'être* since the end of the Second World War. While the breakup of the Soviet Union and the demise of communism did not eliminate this concern entirely, it did call into question the continued efficacy of U.S. intelligence activities in the post-Cold War world. What were intelligence agencies now expected to do?

Several commentators have suggested that U.S. intelligence ought to refocus on economic matters — in particular, on supporting U.S. commercial firms as they compete for markets around the world. Their rationale is that an increasing decline in U.S. competitiveness is the greatest long-term threat to the nation's security. As long as other countries use their intelligence services to support their domestic industries, why should the United States hamstring itself?

But the Bush and Clinton administrations have resisted using intelligence agencies to support the business interests of the private sector. Former Director of Central Intelligence Robert M. Gates came directly to the point when he told the Senate Select Committee on Intelligence that CIA agents were willing to spy for their government but not for General Motors. Gates did say that

1. The author wishes to acknowledge the assistance of L. Britt Snider, general counsel of the Senate Select Committee on Intelligence, in the preparation of this article.

the intelligence community was prepared to inform the FBI of efforts by foreign governments to penetrate U.S. companies, but he said it was not appropriate to go beyond a defensive role. Gates's successor, R. James Woolsey, has taken the same position in public statements.

It is fair to say that even those in the private sector who urge an expanded role for U.S. intelligence regard the issue as relatively minor when compared with larger problems preventing government from improving competitiveness. Pointing to such sore points as cumbersome export controls, inadequate export subsidy funding and the failure to protect intellectual property rights abroad, they say that increased support from the intelligence community would be beneficial but not imperative.

The policy issue for U.S. intelligence, however, remains on the table. The Senate Select Committee on Intelligence has been examining this issue for the last three years. While it has worked mostly behind closed doors, the committee held its first public session on this subject on 5 August 1993 to hear testimony from several representatives of the U.S. business community. It has taken considerable time for a consensus to emerge, but now, opinion on the committee is beginning to crystallize. This article examines the status of the debate and makes clear where I stand.

The paper first will describe what the intelligence community traditionally has done regarding economic issues. Next it will explain some of the ideas that have been presented to the Select Committee on Intelligence, in both public and private session, of what role the intelligence community might play in the post-Cold War world. Finally, the paper will close with what I have come to believe should be the appropriate role of intelligence agencies in promoting U.S. economic interests abroad. While I share Mr. Gates's view that the intelligence community should not conduct espionage on behalf of specific private companies, it can play an important role in supporting the departments and agencies of the U.S. government who have responsibility for keeping the playing field level for American business abroad.

THE TRADITIONAL ROLE OF THE INTELLIGENCE COMMUNITY IN ECONOMIC AFFAIRS

Typically, the U.S. intelligence community² has collected and analyzed information regarding the economic activities of, and economic developments in, other countries. Collection has been accomplished by several agencies: the Central Intelligence Agency and the departments of State, Commerce, Treasury and Defense, among others. Analysis has largely been the province of the CIA. Relying primarily upon information reported from U.S. diplomatic posts around the world, open source collection and signals intelligence, CIA analysts have produced thousands of intelligence reports annually on economic topics. The reports analyze a government's economic policies, its long-term economic strategy, its level of success and the likely political repercussions of its policies.

These analyses were written primarily for U.S. government consumers at the State, Commerce and Treasury departments and the Executive Office of the President, in support of their respective functions. In some cases, the analysis served as the basis for U.S. diplomatic initiatives or as evidence in trade negotiations. In other cases, it was used to assess the effects of U.S. policies toward the country concerned — to determine, for example, whether assistance should be instituted or continued, or whether trade sanctions should be imposed or terminated. Sometimes the intelligence analysis was used to promote U.S. trade interests abroad by identifying countries and areas of commerce in which U.S. companies might compete successfully.

For the most part, however, economic analyses were not written for the use or benefit of the private sector. While the private sector might have benefitted indirectly from actions taken by the

2. The U.S. "intelligence community" is defined by the National Security Act of 1947, as amended in 1992, as including the CIA; the National Security Agency; the Defense Intelligence Agency; the Central Imagery Office; the National Reconnaissance Office; other offices within the Department of Defense for the collection of specialized national intelligence; the Bureau of Intelligence and Research of the Department of State; and the intelligence elements of the Army, Navy, Air Force, Marine Corps, Federal Bureau of Investigation, Department of Treasury and the Department of Energy.

U.S. government vis-à-vis another country, the intended recipients of intelligence analysis were usually government officials.

Nor was economic analysis typically geared toward specific foreign companies or particular commercial transactions. Intelligence agencies generally did not report on the status of foreign commercial transactions (especially if U.S. companies were participating in them, given the restrictions that limit intelligence gathering on U.S. citizens and companies). Unless national security was obviously involved, intelligence agencies did not see their mission as keeping up with commercial developments in foreign companies.

On the other hand, although I am unaware of any formal policy that requires it, the intelligence community (usually through the FBI) traditionally has advised U.S. companies when intelligence reporting suggested that they may be the target of an intelligence operation by a foreign government. Although the government may not reveal the source of such information, U.S. companies have received warnings that their proprietary information (or classified information, where government contractors are concerned) may be at risk. To regard such warnings as intelligence analysis might be something of an exaggeration. Nonetheless, these notices are important to the companies concerned.

The post-Cold War intelligence community continues to do this sort of intelligence gathering and analysis of economic information for government consumers, and few seriously dispute the need for it to continue. Indeed, economic issues now are likely to require even more attention from U.S. policy makers. The issue is whether a new, supplementary approach is needed, geared more directly to the commercial needs of the private sector. After all, the argument goes, these companies are U.S. taxpayers, and the departments of State and Commerce have statutory responsibilities to promote the international competitiveness of U.S. firms. If the government has information that would assist these firms in competing abroad, why not make such information available, selectively or otherwise?

In the last three years, proponents of economic intelligence have presented the Senate Intelligence Committee with many suggestions in this regard, which will be discussed here in order from extreme to relatively benign.

POSSIBLE ROLES FOR THE INTELLIGENCE COMMUNITY

Economic Espionage

What most seems to capture the attention of both the public and pundits is the idea that U.S. intelligence agents should clandestinely penetrate foreign companies to steal their proprietary data for U.S. competitors. While this idea may appeal to those who enjoy the swashbuckling exploits described in spy novels, it seems to have garnered virtually no support within the government or, more important, the business community. At his confirmation hearings, Gates testified:

Economic intelligence is something where we need to proceed with some care. ...We've tried for ten years or more to find a way to get it [economic intelligence] into the hands of U.S. business, and we can't find a way that does not get tangled up in the law, in advantaging one company over another.³

Similar comments have been heard from U.S. business leaders. When he testified before the Intelligence Committee, John F. Hayden, corporate vice president of the Boeing Company, said:

The Boeing Company is not dependent today nor should we be in the future, on the U.S. intelligence community to acquire for us technological, marketing or economic information about our competitors. ...We do not believe it is either appropriate or necessary to secure in a clandestine fashion the secrets of our competitors. ...We can hold our own, and, indeed, prevail, in international competition when we are given a fair chance to harness the natural and intellectual resources which reside in this country.⁴

Thomas F. Faught Jr., president of Boyden Associates and a consultant to intelligence agencies, agrees:

[T]he idea of taking U.S. intelligence assets and using those to collect in a clandestine or covert fashion information to help us is not only reprehensible...but costly.... [W]e do not need covert assistance.⁵

3. U.S. Senate Select Committee on Intelligence, *Hearings on Nomination of Robert M. Gates*, 102nd Cong., 1st sess., 16 September 1991, pp. 580, 628.

4. U.S. Senate Select Committee on Intelligence, *Hearings on Economic Intelligence*, 103rd Cong., 1st sess., 5 August 1993, unpublished as of this writing.

Evidence suggests that other governments, as well as foreign companies, have spied on U.S. firms. For example, in March 1993, the CIA obtained what appeared to be a collection plan prepared by the French intelligence service in 1989. The document, later made public, identified 70 or so U.S. commercial entities as targets for intelligence gathering. While the French ambassador to the United States later denied that any clandestine intelligence efforts had been mounted against U.S. firms,⁶ the document in question — which was judged authentic by experts — clearly indicated a French intelligence interest in the activities of the U.S. firms concerned.

But even though other countries' intelligence services have targeted U.S. firms in the past — and there is nothing to suggest they will stop — the evidence does not suggest that such practices have been particularly widespread or that they have had a significant impact on U.S. business, especially when considered against the overall size of U.S. exports or when compared with other obstacles to competition.

Mark M. Lowenthal, a senior specialist in foreign policy at the Congressional Research Service, testified to the Intelligence Committee that the dangers of foreign economic espionage are real but exaggerated. According to Lowenthal, the American Society of Industrial Security's Committee on Safeguarding Proprietary Information reported that in 1992, the 32 largest companies lost data worth \$1.8 billion. "That is a large sum of money," he said, "but in the context of a six-trillion-dollar economy, it is the equivalent of three-hundredths of one percent of U.S. GNP." Not only that, the study reported that more than half of the cases involved losses attributed to employees, not to outside espionage.⁷

There is also considerable concern that even if the U.S. government wanted to, the intelligence community might not be able to carry out this type of intelligence-gathering operation. It is unlikely that U.S. intelligence agencies would be able to ascertain what

5. *ibid.*

6. This statement was made to me in a personal conversation in April 1993.

7. U.S. Senate Select Committee on Intelligence, *Hearings on Economic Intelligence*, 103rd Cong., 1st sess., 5 August 1993, unpublished as of this writing.

was important to U.S. industry and gear its efforts accordingly. As consultant Faught told the committee:

I have difficulty appreciating what would be the value of economic intelligence collection efforts, given the difficulty of determining the type or nature of data to seek, the highly specific needs of individual companies, the challenges of equitable dissemination and the probable cost involved, not to mention the possible damage to international trade and political relations which such efforts might incur.⁸

Using intelligence agents to penetrate and spy on foreign commercial firms is neither necessary nor desirable. But this does not settle the issue of how such agents might be appropriately used. Indeed, I have come to regard economic espionage as something of a red herring in this debate — something that, although wanted by neither the government nor business, provides a distraction from the more compelling practical questions at hand.

Incidental Collection

It is not clear what intelligence agencies should do if they come across commercially valuable information or have potential access to it through established contacts or day-to-day activities. If agents go ahead and collect such information and report it back through government channels, what should Washington do with it? If the information were published or shared with all potential U.S. competitors, it would not be very useful, since foreigners would have access to it. Yet if it were shared only with select companies, then the government certainly would be criticized for giving preferential treatment to private firms.

While there is wider support for reporting incidentally collected information back to Washington than for working clandestinely, most people who have testified before the committee posit that U.S. intelligence agencies should not collect information solely because it may be useful to U.S. firms — even if the knowledge can be obtained without intrusive, clandestine techniques.

But larger questions remain: What if the commercial information at issue involves a situation where U.S. firms are being placed

8. Statement cited above.

at a commercial disadvantage? Suppose an intelligence agency, without penetrating a foreign firm, obtains evidence suggesting that a foreign company has bribed a foreign government official to gain a competitive advantage over a U.S. firm on a contract bid? Or that the foreign firm has surreptitiously obtained access to the U.S. company's bid? Or that an official of the foreign government has "tweaked" the contract proposal by including in it conditions designed to exclude or disadvantage U.S. competitors? It is tempting to assume such practices would not happen — that other countries would want the participation of U.S. firms, and that the dealings of a foreign government would be above board. But these sorts of practices are surprisingly common and will no doubt continue in the future.

It is difficult to determine what should be done in these circumstances — if intelligence agencies should collect such information and report it to Washington; if the government should report it to the U.S. companies involved; and if, once they have identified a potential competitive problem for U.S. business, intelligence agents should continue to find out what they can through clandestine as well as overt means.

At this point, opinion begins to shift in favor of an intelligence role in commercial affairs. Gates alluded to this during his confirmation hearings when he said the following:

The intelligence community should spend more effort gathering and reporting information when other countries are not playing by international rules, when they are colluding with their industries in ways that put U.S. industry at an unfair disadvantage — in other words, collecting and reporting information that will help our policy makers level the playing field.⁹

Precisely how such principles would translate into policy has not yet been determined. The government must decide how to collect information when a competitive problem has been identified and what policy makers might do with such information once reported. Neither government nor industry representatives

9. *Hearings on Nomination of Robert M. Gates*, Vol. 1, p. 580.

have spelled out to the committee how these tasks might be accomplished.

Enforcing Trade Agreements or International Economic Controls

A number of witnesses before the committee have suggested that the intelligence community should devote greater attention to determining the compliance of other countries and their industries with international trade agreements and controls, such as economic sanctions. They say that Congress should provide greater resources to monitor those agreements and controls that affect the competitive position of U.S. companies. As such, witnesses have said intelligence agencies should attempt to identify violations of U.S. intellectual property rights by the industries of other countries, document the failure of other countries to comply with trade agreements that ensure access by U.S. firms to their markets, and track efforts to circumvent U.S. import restrictions.

Serving as an Information Clearinghouse

Most witnesses who have appeared before the committee have acknowledged how difficult it would be for the intelligence community to make information available on a selected basis to U.S. industry, since in such cases the government would be favoring certain firms over others. If the government provides to one, it must provide to all, at least within a certain industry. This is complicated, because information provided by the intelligence community would ordinarily be classified, and not all U.S. firms hold security clearances permitting them access.

Yet many observers have suggested the intelligence community could still serve as a clearinghouse for certain types of unclassified information that could be gathered by intelligence agencies and made available to U.S. firms upon request. These might include:

•Translations of Technical Journals and Broadcasts

Many U.S. firms are not able to obtain or translate foreign journals and broadcasts relating to technical subjects within their respective commercial fields. Translating foreign language text is the stock in trade of the intelligence community, the argument goes, and thus might well be a tangible contribution to U.S. industry.

•**Data on Foreign Governments and Officials Involved in Trade**

Critical to the success of U.S. business ventures abroad is an understanding of a foreign government's trade organization, the legal conditions and requirements for doing business in that country and an identification of the key government officials involved as well as information concerning their predilections and relationships. Since such information is already being collected by the intelligence community, some observers contend, it could be made available with very few additional resources.

•**Demographic and Economic Data for Marketing Decisions**

In order to decide where to apply their marketing efforts abroad, U.S. companies must conduct (or pay for others to conduct) market surveys of the countries concerned. They must identify, among other things, population centers, average income, availability and cost of the goods or services at issue, competitors and the country's economic infrastructure. The intelligence community either already collects such information or, again, might do so with little extra effort.

•**International Economic Opportunities**

The Commerce Department publishes *Commerce Business Daily*, which advertises contracts offered by the U.S. government. It has been suggested that the intelligence community could publish a similar listing of the contracts being offered by foreign governments. Since economic counselors and Foreign Commercial Service officers at embassies around the world routinely provide this sort of information on an ad hoc basis, the intelligence community could easily publish such information in the United States.

As appealing as the clearinghouse approach may seem at first, it is not without problems. As Mark Lowenthal noted:

In this age of multilateral corporations, how does one determine what constitutes a U.S. company? Is Ford, with its wholly owned British subsidiary, a U.S. company? Is General Motors, given its ongoing joint venture partnerships with Toyota, Saab and Opel?¹⁰

10. Statement of Mark Lowenthal, cited above.

In other words, if the idea is to make U.S. firms more competitive by making certain unclassified information available to them (and not their foreign competitors), how does the government, or the intelligence community, limit access to such information to "U.S. companies"? The government would need criteria to determine what percentage of foreign ownership or what extent of foreign ties would disqualify firms from receiving such assistance. But if the information is unclassified, there would be no legal basis for limiting access, and it would be available to a private citizen anyway through the Freedom of Information Act. In that case, an American citizen could make the same knowledge available to a foreign recipient.

Another problem with the clearinghouse approach is that it would mean using the intelligence community to carry out functions assigned to the Foreign Commercial Service of the Department of Commerce and State Department emissaries abroad.

To be sure, the intelligence community does collect a great deal of information from open sources. It must do so in order to understand, supplement and evaluate the information obtained from other, non-public sources. But intelligence agencies were not established to collect information that is openly available. Rather, precisely the opposite is true. To give them this mission as well would inevitably divert them from their primary task.

Commercial Sale of U.S. Satellite Imagery to Industry

The Intelligence Committee has considered the commercial sale of U.S. satellite imagery largely within the context of whether it is appropriate to allow U.S. manufacturers and operators to sell satellites and the imagery they produce to other governments. It is clear, however, that there is apt to be a large market among U.S. industry for such imagery, which could prove highly useful in developing cost estimates and bids for work in other countries.

Satellite imagery is already available to U.S. and foreign industry from the French SPOT system, but the United States has not yet made imagery commercially available to domestic or foreign manufacturers. The Clinton administration has taken a step in this direction, however, realizing that the United States cannot continue to eschew making commercial use of its satellite capability, especially since U.S. products are probably superior to anything currently on the market. On 4 March 1994, the Clinton

administration announced that new export control policies and procedures would be put in place to permit the commercial sale of imagery as well as the technology used for such collection. In implementing such a policy, however, the government must take into account security considerations, regardless of the quality of its resolution and whether such imagery is sold by the government or by government contractors.

Counterintelligence

As mentioned earlier, there seems to be consensus in government and industry that the intelligence community should somehow engage in counterintelligence on behalf of U.S. industry. As Boeing's Hayden testified:

We must rely on the government to help protect us from foreign spies who wish to tilt the tables in favor of their own national industries by stealing our technology, our processes and materials, our marketing strategies and plans. This defensive shield, if you will, is the proper role for our government to play.¹¹

Indeed, the intelligence community has been warning U.S. industry of possible intelligence attacks by foreign governments since long before the end of the Cold War. Such information was frequently picked up by CIA or Defense operatives overseas or as a result of FBI counterintelligence operations within the United States. Also, cooperating foreign governments or simply private citizens or companies within the United States may have reported suspicious activities to the FBI. This information, uniquely available to the intelligence community, has directly affected the security and competitiveness of U.S. firms. And while the intelligence community is careful to withhold information that would reveal its sources and methods, it historically has provided enough information to enable the U.S. firm to protect itself.

Nonetheless, since the end of the Cold War, the intelligence community's efforts in this regard have changed both qualitatively and quantitatively — particularly at the FBI — and they are paying renewed attention to the adequacy of the existing laws. In

11. Statement of John F. Hayden, cited above.

February 1992, the FBI dispensed with its old "criteria country" approach to counterintelligence investigations. Under this method, the FBI would initiate a counterintelligence investigation involving alleged efforts to penetrate a U.S. firm only if the allegations involved a country on the criteria country list. In its place, they have adopted a broader, more flexible approach, the National Security Threat List (NSTL). Now, regardless of the country involved, the FBI carries out investigations of "issue threats," which encompass efforts by foreign governments to clandestinely or improperly obtain proprietary or classified information held by U.S. industry.

The new guidelines permit counterintelligence investigations of foreign individuals or corporate entities operating within the United States in order to ascertain whether they have ties to their home governments and intelligence services. When the FBI is unable to establish such ties, it may, depending upon the circumstances, turn the case over to local law enforcement authorities to pursue as a potential criminal matter (e.g., theft of private property). In any event, the FBI continues to bring appropriate officials of the targeted U.S. firm into the investigation at an early stage, whether or not a foreign government connection is established, and to provide sufficient information to enable the company to protect itself.

While the precise number of such investigations is classified, suffice it to say that far more FBI investigations of alleged intelligence attacks on U.S. firms are taking place under the NSTL than took place under the "criteria country" approach of the Cold War era, notwithstanding the absence of a more clearly defined security threat. While these investigations have yet to produce significant results in terms of criminal prosecutions, they clearly have resulted in the FBI's casting a far wider net to identify and deal with improper or illegal activities within the United States that threaten U.S. economic interests.

The increased number of investigations also has prompted a look at the need for new criminal statutes to provide a more authoritative basis in federal law for FBI investigations when a foreign government connection cannot be established. The problem arises when the FBI is investigating a foreign individual or corporate entity that appears to be trying to steal the proprietary information of a U.S. firm within the United States. If the FBI can

establish that the individual or corporate agent has converted tangible property of the U.S. firm (blueprints, formulas, etc.) for its own use and taken such property across state lines, it may continue to investigate the case as interstate theft of private property. But if, for example, the culprit has memorized the formula or specifications, or has kept it within state lines, the FBI cannot investigate and prosecute under federal criminal law. While such conduct might still be prosecuted under state law as common theft, the FBI has the capability to investigate foreign individuals or entities that state and local law enforcement do not possess.

This situation has caused the Justice Department to consider the need for legislation making it a federal crime to steal intellectual property with the intent to remove it from the United States. While no bill has yet been proposed, the matter is being reviewed. In order to provide a broader jurisdictional basis for the FBI to investigate cases involving foreign individuals or entities, such legislation is definitely needed. Federal involvement should not hinge upon an ability to prove that a foreign government is involved or that tangible stolen property has been taken across state lines.

THE APPROPRIATE ROLE FOR INTELLIGENCE AGENCIES

How the United States competes economically after the Cold War will determine if the country can preserve its superpower status and maintain prosperity. The time is long past when international economic policy could be based on protecting U.S. industries from foreign competition. Nor can we afford government policies that unreasonably hamper or preclude U.S. companies from competing in the global marketplace. The government and industry need to cooperate and overcome the hostility that has been all too evident in the past. In short, the government needs to make a concerted effort to support and strengthen the international position of its domestic industries by all appropriate means, including the prudent use of intelligence according to the following principles:

First, the intelligence community should continue to support governmental requirements and not attempt to satisfy private ones. A number of government departments and agencies (the newly created National Economic Council, the Office of the U.S.

Trade Representative and the departments of State and Commerce) promote the international competitiveness of U.S. companies. What the intelligence community does to assist the international competitiveness of domestic industry ought to be accomplished for or through these departments or agencies, not directly with private industry.

Second, the intelligence community should refrain from activities that would prompt retaliation by other countries. The use of clandestine, intrusive techniques to collect information from foreign firms is immoral and would, if discovered, bring about the use of similar techniques against U.S. firms. Thus it should be avoided — the benefits are not worth the risks.

Third, the intelligence community should continue to focus on obtaining "non-public" information from other countries and should not be diverted to obtaining and disseminating publicly available information. In short, what the intelligence community does to promote U.S. economic competitiveness should be consistent with its overall mission to collect foreign intelligence in order to satisfy political and military needs; it should not detract from the primary work of intelligence.

Finally, intelligence support ought to be defensive in nature and be applied evenhandedly and systematically, regardless of the U.S. industry, company or country concerned. Offensive activities not only invite retaliation but inevitably lead to favoring selected industries or companies over others. Intelligence agencies cannot satisfy the demands of all U.S. companies for information on their foreign competitors. If the approach is defensive, however, the U.S. can adopt a consistent policy with respect to industry as a whole, taking appropriate measures in any cases where U.S. competitive interests are unfairly threatened.

Offensive measures should not, however, be ruled out altogether. While clearly such activities have to be carefully considered and carried out, there could be circumstances where the United States would want to undertake retaliatory measures vis-à-vis another country. They should be kept as an option only for when all other efforts to cooperate have failed.

With these principles as guidance, I advocate a role for U.S. intelligence in promoting economic competitiveness abroad in several areas:

Collection of Information on Unfair Trade Practices

While intelligence assets should not be used to collect information for U.S. industry concerning their foreign competitors, I do think that intelligence agencies should collect information that indicates U.S. firms may be the victims of unfair trade practices abroad — for example, bribery of contracting officials, manipulation of contract provisions to exclude U.S. participation and improper disclosure of U.S. bids to foreign competitors. Once such situations have been identified, the intelligence community should seek additional information to document or prove the case, regardless of the U.S. industry or company involved, even if the foreign country is an ally.

Information gathered in this manner should be given routinely to the departments of State and Commerce and other appropriate offices, in order to eliminate the perceived disadvantage for U.S. firms. Whether or not the government can inform U.S. firms of the knowledge will depend upon the sensitivity of the intelligence sources and methods involved. If such notice is possible, it ought to be provided by State or Commerce rather than by intelligence agencies.

Monitoring Trade Agreements and International Control Regimes

The intelligence community should pay more attention to a function it has been performing for many years: monitoring trade agreements and international control regimes that have a direct bearing on U.S. competitiveness. This is a matter of more clearly focusing existing collection and analysis rather than creating a new functional area.

For example, the intelligence community is often in a position to collect information regarding efforts by countries and foreign companies to pirate and sell goods manufactured in the United States, to introduce goods into the United States through third countries in violation of bilateral agreements and to create unfair obstacles for U.S. firms to enter their markets.

In my view, intelligence agencies have an obligation not only to identify such activities but also to utilize the resources at their disposal to continue developing evidence that the departments of State or Commerce, or other offices in the U.S. government, can use to address these practices with the foreign government con-

In this case, it may be desirable for intelligence agencies or their contractors to deal directly with industry, rather than through the Department of Commerce.

Providing Counterintelligence Support

Finally, I agree with the consensus that the intelligence community must, above all, provide counterintelligence support to U.S. industry, not only to protect classified information but to help protect their own proprietary information as well. Whether such information is produced pursuant to government contract or not, government has a considerable stake in its protection. If the U.S. competitive advantage erodes, the country's economic strength will diminish.

The new approach of the FBI makes sense. The theft of U.S. technology and know-how cannot be addressed adequately by investigating only the activities within the United States of those countries that are perceived as unfriendly. Economic competition involves allies as well as adversaries.

Based upon my inquiry into the subject, it appears that a new criminal statute would be desirable — one that provides a basis for FBI investigation and prosecution of trade secret cases. Where the case involves foreign nationals or foreign corporate agents operating in the United States but links to foreign governments cannot be established, the FBI often must turn the case over to local law enforcement to handle as simple theft. But local law enforcement rarely has the capability to adequately investigate such cases, which often involve elements of foreign or trade policy that are better addressed at the federal level. I thus support the administration's ongoing effort to develop new criminal legislation in this area.

If there are problems in terms of the intelligence community's counterintelligence support for industry, they occur either because these agencies, normally focused outward, are often insufficiently sensitive to activities within the United States, or because they fail to report relevant information (even to the FBI), lest their sources be revealed to industry officials or in court. While the Intelligence Committee has been assured that these problems have been largely overcome in recent years, in some instances relevant information does not reach a U.S. firm at risk.

cerned. In appropriate cases, such information should be made public as well, but by the department or agency charged with redressing the improper activity, not by intelligence agencies.

Providing Information to Government Agencies

While I do not favor making the intelligence community an information clearinghouse to support U.S. business activities abroad, intelligence agencies do have a responsibility to report to the Department of Commerce both confidential and publicly available information relevant to Commerce's support of U.S. business interests abroad. As I see it, the intelligence community is not sufficiently attuned to the needs of the business community and, therefore, would not appropriately analyze or report what information it has obtained. But the intelligence community retains a great deal of information regarding the organizations and officials responsible for trade policy and the implementation of those policies in other governments, information important to doing business abroad. Clearly, the intelligence community often learns of new initiatives or new opportunities for U.S. business in other countries.

The intelligence community needs a better mechanism with which to ensure that relevant information is reported to Commerce more systematically and comprehensively than has been the case. Again, I do not favor direct communication between intelligence and business, but rather better support to the government agency charged with promoting U.S. business interests.

Making Satellite Imagery Commercially Available to U.S. Business

The time has come for the intelligence community to seriously consider making satellite imagery available to U.S. business. Since similar information is being sold by other countries, and since foreign business competitors have access to imagery produced by their intelligence services, the United States cannot afford to keep its industry at a tactical disadvantage. Security considerations are important but not insurmountable.

I put satellite imagery in a different category than intelligence information in general, because it appears that the intelligence community will have to be more directly involved in control and dissemination of imagery products than in intelligence generally.

CONCLUSION

At his confirmation hearing, Director of Central Intelligence R. James Woolsey described economic intelligence as "the hottest topic" among current policy issues and announced that the Clinton administration was instituting a policy review of the subject.¹² As of April 1994, however, the results of this review had not been made public or conveyed to the intelligence committees.

Suffice it to say that, whatever actions may be recommended or directed as a result of this review, there will be a need for additional written policies and institutional mechanisms to implement them. Now, what passes for economic intelligence policy is largely a matter of collection requirements, which are voluminous but too unfocused. Intelligence agencies are left to do what they feel is appropriate. They need clear and consistent guidance, as well as institutional mechanisms within State and Commerce to evaluate and make use of what the intelligence community produces. The existing mechanisms are ad hoc creations vulnerable to change with each new administration.

As noted at the outset of this article, the intelligence community's role in promoting U.S. economic interests abroad is necessarily limited and pales in significance when considered against those areas of government activity with a more direct, pervasive impact on the ability of U.S. business to compete abroad. The sudden and intense concern about the role of intelligence agencies owes more, I suspect, to the concern about what intelligence agencies should do at the end of the Cold War than to the impact that the intelligence community is apt to have on promoting U.S. competitiveness. Nonetheless, it is an area that deserves more serious consideration than it has received, if only to provide clearer guidance and direction to intelligence agencies. While clearly the role of the intelligence community is limited, we should utilize its capabilities where appropriate to promote and protect the interests of the United States.

12. U.S. Senate Select Committee on Intelligence, *Hearings on Nomination of R. James Woolsey*, 103rd Cong., 1st sess., S. Hrg. 103-296, 2 February 1993, p. 87.